

**COMMONWEALTH OF MASSACHUSETTS
DEPARTMENT OF REVENUE
DIVISION OF LOCAL SERVICES**

Bureau of Accounts
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MUNICIPAL BORROWING

Chapter 594 of the Acts of 1989
(Amending G.L. Ch. 44, S. 7 & 19 and Adding Ch. 44, S. 53H)

SUMMARY:

This legislation makes several technical changes in the purposes for which municipalities can borrow and provides additional flexibility in structuring the repayments of debt, especially for certain revenue producing projects and projects whose debt service has been excluded from the limitations of Proposition 2½. It also authorizes the rebate of funds to the federal government to avoid the loss of tax exempt status for the municipality's debt.

GUIDELINES:

A. Authority to Borrow

There have been several changes in the purposes for which cities and towns are authorized to borrow within their debt limit under General Laws Chapter 44 Section 7.

1. Repair and Remodeling of Public Buildings

Cities and towns may now borrow for up to twenty years for the repair and remodeling of public buildings. G.L. Ch. 44 §7 CL. 3A. Previously, municipal borrowings for that purpose were limited to a ten year term.

Borrowings for repair and remodeling projects may now also include in the project cost original equipment and site improvements such as landscaping or paving if the equipment and site improvements are incidental or directly related to the project.

All of these repair and remodeling projects must still be approved by the Emergency Finance Board.

2. Departmental Equipment

Cities and towns may now borrow for up to fifteen years to buy departmental equipment if the Emergency Finance Board approves the longer borrowing period. G.L. Ch. 44 §7 CL. 9. Previously, all municipal borrowings for departmental equipment were limited to a five year term.

Cities and towns seeking to borrow for longer than five years for equipment purchases will have to submit any information the board requires on the equipment's probable useful life.

Municipalities that elect to borrow for five years or less to buy equipment may do so without Emergency Finance Board approval.

3. Court Judgments

Cities and towns may now borrow for the payment of final court judgments even if the judgments are rendered before the setting of the municipal tax rate. G.L. Ch. 44 §7 CL. 11. Previously, cities and towns could borrow to pay final court judgments only if the judgments were rendered after the tax rate had been set. Where the tax rate had not been set, this restriction often left cities and towns little or no time to adjust their budgets to accommodate these judgments within their Proposition 2½ limits. Under the new amendment, municipalities will be able to obtain an extra year in which to make any necessary adjustments to their budgets. The maximum term for borrowings for court judgments is still one year.

B. Repayment of Debt

Cities and towns have been given increased flexibility in the schedule and level of debt service payments under G.L. Ch. 44 §19.

1. Payment Schedule

Cities and towns may now schedule the first principal payment on a bond issue for anytime in the next fiscal year. Previously, the first payment had to be made, no later than a year after the issue date. Subsequent payments will also normally be made on the anniversary date of the first principal payment rather than on the anniversary date of the issuance of the bonds. This will let issuers arrange the timing of principal payments in the way that is most easily coordinated with the municipality's annual cash flow.

However, the price for this flexibility in scheduling principal payments will be a reduction in the number of years over which the principal payments can be made. An issuing municipality that defers principal payments to a date more than one year after the issue date will pay off the debt over a shorter term than the maximum otherwise permitted.

For example, suppose a municipality borrows on July 10, 1990 for a purpose for which the maximum term of any borrowing is five years, and the first principal payment is made on June 20, 1992 with subsequent payments also scheduled for June 20. The final principal payment would be made on June 20, 1995, resulting in four rather than five principal payments. Only if an additional payment were scheduled to be made by July 10, 1995 could the municipality make five repayments.

2. Payment Amount

Cities and towns now have expanded flexibility to schedule their debt service payments so that the total amount of principal and interest paid each year will be as nearly equal as possible. Previously, level service debt payments were permitted only for debt sold to the Farmers, Home Administration of the U.S. Department of Agriculture and certain school construction projects.

Debt may now be issued with a level payment debt service schedule for:

- a. A purpose for which a debt exclusion question under Proposition 2½(G.L. Ch. 59 §21C(k)) has been approved at an election, or
- b. A capital project of a revenue producing enterprise if:
 - an enterprise fund has been adopted under either G.L. Ch. 44 §53F ½ (formerly G.L. Ch. 40 §39K) or a comparable statutory provision.
 - the city auditor or town accountant certifies that the enterprise's rates and charges have been set at a level sufficient to recover fully its estimated capital and operating costs.

For the purpose of determining eligibility to issue level payment debt, a statutory provision for an enterprise fund will be considered comparable to Ch. 44 §53F ½ if it requires the enterprise to account for all direct and indirect costs.

Rates and charges may be considered sufficient to recover fully the enterprise's capital and operating costs if rates already adopted are sufficient to recoup all current direct and indirect operating costs under enterprise accounting as well as the anticipated debt service cost of the project to be financed by the level debt service bonds and the debt service of all outstanding debt for other projects and facilities of the enterprise.

C. Rebates to the Federal Government

Cities, towns and districts now have the authority to rebate to the federal government without an appropriation amounts they deem necessary to preserve the tax exempt status of debt they have issued. G.L. Ch.44 §53H. Municipal bonds, exempt status can be lost if the proceeds are spent for private purposes or if the municipality's interest earnings on the proceeds exceed the amounts permitted by federal arbitrage regulations.

1. Decision to Rebate

The decision to rebate money must be made by the same officers whose signatures are required for the issuance of debt. The following officers may make rebates:

- a. In Towns: the treasurer and a majority of selectmen.
- b. In Cities: the treasurer and mayor or city manager.
- c. In Regional School Districts: the treasurer and chairman of the regional school committee.
- d. In All Other Districts: the treasurer and any other officers, such as a majority of the prudential committee, whose signatures may be required on bonds or notes by the district's enabling legislation.

2. Funding Rebates

The amount of any rebates must be raised in the next tax rate or annual budget, unless an appropriation or other provision has been made to fund their cost.

The Division of Local Services is responsible for oversight of and assistance to cities and towns in achieving equitable property taxation and efficient fiscal management.

The Division regularly publishes IGRs (informational Guideline Releases detailing legal and administrative procedures) and the BULLETIN (announcements and useful information) for local officials and others interested in municipal finance.

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